

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

GARY LEE BEAVERS,

Plaintiff,

v.

HOSEY, MENDOZA, and ESPINOZA,

Defendants.

Case No. 1:21-cv-00650-HBK (PC)

ORDER GRANTING DEFENDANTS'  
EXHAUSTION BASED MOTION FOR  
SUMMARY JUDGMENT AS TO  
DEFENDANTS MENDOZA AND  
ESPINOZA<sup>1</sup>

(Doc. No. 38)

Pending before the Court is Defendants' exhaustion-based Motion for Summary Judgment brought on behalf of Defendants Mendoza, and Espinoza on October 25, 2024. (Doc. No. 38, "MSJ"). Plaintiff filed an Opposition, (Doc. No. 41), and Defendants filed a Reply. (Doc. No. 44). Finding no genuine dispute of material fact that Plaintiff did not exhaust his Eighth Amendment failure to protect claims against Defendants Mendoza and Espinoza, the Court grants Defendants' MSJ. This case remains pending against only Defendant Hosey.

**I. BACKGROUND**

**A. Summary of Plaintiff's Operative Complaint**

Plaintiff Gary Lee Beavers ("Plaintiff" or "Beavers"), a state prisoner, proceeds on his

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<sup>1</sup> Both parties have consented to the jurisdiction of a magistrate judge under 28 U.S.C. § 636(c)(1). (Doc. No. 36).

1 First Amended Complaint (“FAC”), as screened, alleging an Eighth Amendment claim for failure  
2 to protect against Defendants Hosey, Mendoza, and Espinoza. (Doc. Nos. 14, 16, 18). In  
3 relevant part, the FAC alleges the following facts. On April 7, 2019, while Plaintiff was  
4 incarcerated at Wasco State Prison (“WSP”), Plaintiff told a fellow inmate named Price that he  
5 wanted to be repaid for some coffee that inmate Price had “borrowed” from him. (Doc. No. 14 at  
6 8 ¶ 3). Inmate Price, who was a porter in Building 4, refused to do so. (*Id.*). When Plaintiff  
7 insisted, inmate Price screamed at Plaintiff loud enough so that “everyone in the building could  
8 hear.” (*Id.* ¶ 5). Inmate Price threatened Plaintiff, telling him if he didn’t watch out, he (inmate  
9 Price) would “come in there, whip your ass and take all of your commissary.” (*Id.* at 8-9 ¶ 5).

10 Inmate Price then turned to Defendant Hosey, the tower officer controlling the cell doors,  
11 and yelled “open this goddamn door.” (*Id.* ¶ 6). Plaintiff yelled to Defendant Hosey, “don’t open  
12 this door.” (*Id.*). Plaintiff saw Hosey walk to the window overlooking Defendant Mendoza’s  
13 office and nod. (*Id.*). Price was yelling aggressively at Plaintiff, loud enough for Officer  
14 Mendoza to hear. (*Id.* at 8-9). Then Hosey walked back to his station. (*Id.*). Plaintiff again  
15 shouted to Hosey “don’t open this door,” but Hosey electronically opened the door. (*Id.*). Before  
16 inmate Price could notice, Plaintiff closed the door. (*Id.*). After inmate Price yelled to him,  
17 Hosey opened the door again. (*Id.*). This time, Price “rushed into [Plaintiff’s] cell, pummeling  
18 [him] with both fists.” (*Id.* ¶ 7). As a result of the assault, Plaintiff fell backwards onto his metal  
19 bunk, hitting his pelvis and falling to the floor. (*Id.*). Officer Mendoza was the main officer in  
20 charge of the tier during the shift when the assault occurred, along with Officer Espinosa, a  
21 female officer who Plaintiff states had a relationship with inmate Price. (*Id.* ¶ 12). Price had  
22 assaulted another inmate, a fellow porter, days before this incident and was removed as a porter  
23 per prison policy. (*Id.*). Despite the incident and prison policy to the contrary, Officer Espinosa  
24 had Price reinstated as a porter before the incident where he attacked Plaintiff. (*Id.*). As relief,  
25 Plaintiff seeks monetary damages, “protections such as single-cell status,” and medical attention  
26 for his injuries. (Doc. No. 14 at 5).

#### 27 **B. Defendant’s Exhaustion-Based Motion for Summary Judgment**

28 Defendants filed the instant exhaustion-based Motion for Partial Summary Judgment on

1 October 25, 2024. (Doc. No. 38). In support, Defendants submit a memorandum of points and  
2 authorities (Doc. No. 38-1); a Statement of Undisputed Facts (Doc. No. 38-2); the declaration of  
3 Howard Moseley (Doc. No. 38-3); the declaration of F. Marquez (Doc. No. 38-4); and a *Rand*  
4 warning to Plaintiff (Doc. No. 38-5).

5 Defendants contend the uncontroverted evidence proves Plaintiff did not properly and  
6 fully exhaust his available administrative remedies regarding his Eighth Amendment failure to  
7 protect claims against Defendants Mendoza and Espinoza. (*See generally* Doc. No. 38-1).  
8 Specifically, they argue that while Plaintiff's grievance regarding the April 7, 2019 incident  
9 (Grievance 1089) properly alleged a failure to protect claim against Defendant Hosey, it did not  
10 identify either Defendants Mendoza or Espinoza, nor describe any of their actions or inactions  
11 sufficient to put prison officials on notice of any claims against them. (*Id.* at 7-9). Moreover,  
12 while Plaintiff mentioned Defendants Mendoza and Espinoza in his third-level appeal, the Office  
13 of Appeals refused to consider the new information and advised Plaintiff in its September 24,  
14 2019 Third-Level Appeal Decision that, "[t]he appellant has added new issues and requests to the  
15 appeal. The additional requested action is not addressed herein as it is not appropriate to expand  
16 the appeal beyond the initial problem and the initially requested action (CDC Form 602,  
17 Inmate/Parolee Appeal Form, Sections A and B)." (Doc. No. 38-3 at 18). Thus, Defendants  
18 argue that Plaintiff was on notice that any claims against Defendants Mendoza and Espinoza had  
19 not been fully exhausted and would have to be addressed in a refiled or separate grievance. (Doc.  
20 No. 38-1 at 10).

### 21 **C. Plaintiff's Opposition to Exhaustion-Based MSJ**

22 On December 23, 2024, Plaintiff filed an Opposition to Defendants' MSJ. (Doc. No. 41).  
23 In support, Plaintiff submits a "Rebuttal to Defendants' Motion for Summary Judgment" (*id.* at 1-  
24 11) along with copies of Plaintiff's grievance and the administrative responses (*id.* at 12-20). As  
25 an initial matter, Plaintiff's Opposition does not comply with Local Rule 260(b), which requires  
26 the non-moving party to reproduce the moving party's itemized statement of facts and specifically  
27 admit or deny each fact, "including with each denial a citation to the particular portions of any  
28 pleading, affidavit, deposition, interrogatory answer, admission, or other document relied upon in

1 support of that denial.” L.R. 260(b) (E.D. Cal. 2023). Plaintiff’s Opposition does not include a  
 2 response to Defendants’ Separate Statement of Undisputed Facts. Plaintiff also does not submit  
 3 an optional Statement of Disputed Facts, as permitted by Rule 260(b).

4 Plaintiff contends that Grievance 1089 and the additional facts he included in his appeal  
 5 put CDCR on notice as to his Eighth Amendment failure to protect claims against all three  
 6 Defendants, and that CDCR regulations do not prohibit adding the names of additional defendants  
 7 later in the grievance process. (*See generally* Doc. No. 41 at 1-11). Moreover, he contends that  
 8 CDCR officials did not provide an inmate manual explaining the grievance process and forced  
 9 him to submit a grievance immediately after being assaulted. (*Id.* at 4, 7-11). In effect, Plaintiff  
 10 argues the grievance system was unavailable to him and thus the Court should deem his grievance  
 11 exhausted as to all three Defendants. (*Id.* at 10-11). Finally, Plaintiff claims that “name all  
 12 defendant” requirement was repealed on June 1, 2020 and regulations “contemplate” that  
 13 involved staff members may be identified later in the appeal process. (*Id.* at 5-7).

#### 14 **D. Defendants’ Reply**

15 In their Reply, Defendants argue that the uncontroverted evidence demonstrates that  
 16 Plaintiff submitted one grievance related to the claims raised in this action and the grievance  
 17 complained only about actions that could be attributed to Hosey. (Doc. No. 44 at 2). Contrary to  
 18 Plaintiff’s understanding, he was not permitted to add new names to his upper-level grievance and  
 19 the requirement to “name all defendants” was not repealed. (*Id.*). Thus, Plaintiff’s attempt to  
 20 include new allegations against Defendants Mendoza and Espinoza in his third-level review of his  
 21 appeal, was properly rejected consistent with CDCR regulations that prohibit an inmate from  
 22 raising a new issue, information or persons that was not included in their original grievance.

## 23 **II. APPLICABLE LAW**

### 24 **A. Summary Judgment Standard**

25 Summary judgment is appropriate when there is “no genuine dispute as to any material  
 26 fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A fact is  
 27 material where it is (1) relevant to an element of a claim or a defense under the substantive law  
 28 and (2) would affect the outcome of the suit. *See Anderson v. Liberty Lobby, Inc.* 477 U.S. 242,

1 247 (1987).

2 The party moving for summary judgment bears the initial burden of proving the absence  
3 of a genuine dispute of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). When  
4 the moving party has met this burden, the nonmoving party must go beyond the pleadings and set  
5 forth specific facts by affidavits, deposition testimony, documents, or discovery responses,  
6 showing there is a genuine issue that must be resolved by trial. *See* Fed. R. Civ. P. 56(c)(1);  
7 *Pacific Gulf Shipping Co. v. Vigorous Shipping & Trading S.A.*, 992 F.3d 893, 897 (9th Cir.  
8 2021). A mere “scintilla of evidence” in support of the nonmoving party’s position is  
9 insufficient. *In re Oracle Corp. Sec. Litig.*, 627 F.3d 376, 387 (9th Cir. 2010). Rather, the  
10 evidence must allow a reasonable juror, drawing all inferences in favor of the nonmoving party,  
11 to return a verdict in that party’s favor. *Id.*

12 In an exhaustion-based summary judgment motion, the defendant bears the initial burden  
13 of establishing “that there was an available administrative remedy, and that the prisoner did not  
14 exhaust that available remedy.” *Albino v. Baca*, 747 F.3d 1162, 1172 (9th Cir. 2014). If the  
15 defendant carries that burden, “the burden shifts to the prisoner to come forward with evidence  
16 showing that there is something in his particular case that made the existing and generally  
17 available administrative remedies effectively unavailable to him.” *Id.* The ultimate burden of  
18 persuasion remains, however, with defendant. *Id.*

19 The Court has carefully reviewed and considered all arguments, points and authorities,  
20 declarations, exhibits, statements of undisputed facts and responses thereto, if any, objections, and  
21 other papers filed by the parties. The omission to an argument, document, paper, or objection is  
22 not to be construed that the Court did not consider the argument, document, paper, or objection.  
23 Instead, the Court thoroughly reviewed and considered the evidence it deemed admissible,  
24 material, and appropriate for purposes of this Order.

### 25 **B. Exhaustion Under the PLRA**

26 Under the PLRA, “[n]o action shall be brought with respect to prison conditions under [42  
27 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or other  
28 correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C.

1 § 1997e(a). The exhaustion requirement “applies to all inmate suits about prison life,” including  
2 *Bivens* claims. *Porter v. Nussle*, 534 U.S. 516, 524, 532 (2002). Exhaustion is a condition  
3 precedent to filing a civil rights claim. *Woodford v. Ngo*, 548 U.S. 81, 93 (2006).

4 The PLRA recognizes no exception to the exhaustion requirement, and the court may not  
5 recognize a new exception, even in “special circumstances.” *Ross v. Blake*, 578 U.S. 632, 648  
6 (2016). The one significant qualifier is that “the remedies must indeed be ‘available’ to the  
7 prisoner.” *Id.* at 639. A prison’s internal grievance process controls whether the grievance  
8 satisfies the PLRA exhaustion requirement. *Jones v. Bock*, 549 U.S. 199, 218 (2007).

9 However, the Ninth Circuit has held that “a prisoner exhausts such administrative  
10 remedies as are available . . . under the PLRA despite failing to comply with a procedural rule if  
11 prison officials ignore the procedural problem and render a decision on the merits of the  
12 grievance at each available step of the administrative process.” *Reyes v. Smith*, 810 F.3d 654, 658  
13 (9th Cir. 2016); *see also Franklin v. Foulk*, 2017 WL 784894, at \*4–5 (E.D. Cal. Mar. 1, 2017);  
14 *Franklin v. Lewis*, 2016 WL 4761081, at \*6 (N.D. Cal. Sept. 13, 2016). Thus, a prisoner’s failure  
15 to list all staff members involved in an incident in his inmate grievance, or to fully describe the  
16 involvement of staff members in the incident, will not necessarily preclude his exhaustion of  
17 administrative remedies. *Reyes*, 810 F.3d at 958; *Foulk*, 2017 WL 784894, at \*4 (“[T]he court in  
18 *Reyes* found that even though the plaintiff’s grievance failed to name two physicians on the  
19 prison’s three-person pain committee, prison officials were put on notice of the nature of the  
20 wrong alleged in the suit—that the plaintiff was wrongfully denied pain medication.”); *Lewis*,  
21 2016 WL 4761081, at \*6 (“[T]o the extent Defendants argue that Plaintiff failed to comply with a  
22 procedural requirement by not naming Defendants in [his appeal], this deficiency is not  
23 necessarily fatal to Plaintiff’s claim pursuant to *Reyes*”); *Grigsby v. Munguia*, 2016 WL 900197,  
24 at \*11–12 (E.D. Cal. Mar. 9, 2016) (appeal pursued through all three levels of review challenged  
25 the excessive force incident, and prison officials aware of defendant Baker’s involvement); *see*  
26 *also Bulkin v. Ochoa*, 2016 WL 1267265, at \*1–2 (E.D. Cal. Mar. 31, 2016) (declined to dismiss  
27 reckless endangerment claims based on failure to name two defendants in appeal because prison  
28 officials addressed the claim on the merits, were alerted to the problem, knew the actors involved,

1 and were given an opportunity to rectify the alleged wrong); *see also McClure v. Chen*, 246  
2 F.Supp.3d 1286, 1292–94 (E.D. Cal. Mar. 28, 2017) (claim that prison officials failed to provide  
3 adequate medical attention for an eye injury suffered after falling from his bunk, the same as  
4 raised in his federal complaint and pursued until the appeals were granted, was sufficient to  
5 exhaust remedies).

6 Nonetheless, for administrative remedies to be exhausted by California prisoners as to  
7 defendants who were not identified in the inmate grievance, there must be a “sufficient  
8 connection” between the claim in the appeal and the unidentified defendants such that prison  
9 officials can be said to have had “notice of the alleged deprivation” and an “opportunity to  
10 resolve it.” *Reyes*, 810 F.3d at 959 (finding that plaintiff had satisfied PLRA exhaustion  
11 requirements as to two prison doctors despite not having identified them in his inmate appeals  
12 because there was a sufficient connection between plaintiff’s appeal based on inadequate pain  
13 management, and the doctors, who served on the prison committee that had denied plaintiff  
14 medication); *McClure*, 246 F.Supp.3d at 1293–94 (remedies exhausted even though doctors not  
15 named in appeal; prison was placed on notice).

16 An inmate must exhaust available remedies but is not required to exhaust unavailable  
17 remedies. *Albino v. Baca*, 747 F.3d 1162, 1171 (9th Cir. 2014) (en banc). “To be available, a  
18 remedy must be available ‘as a practical matter’; it must be ‘capable of use; at hand.’” *Id.*  
19 (quoting *Brown v. Valoff*, 422 F.3d 926, 936–37 (9th Cir. 2005)). “Accordingly, an inmate is  
20 required to exhaust those, but only those, grievance procedures that are ‘capable of use’ to obtain  
21 ‘some relief for the action complained of.’” *Ross*, 578 U.S. at 642 (quoting *Booth v. Churner*,  
22 532 U.S. 731, 738 (2001)).

23 Failure to exhaust under the PLRA is “an affirmative defense the defendant must plead  
24 and prove.” *Jones*, 549 U.S. at 204. It is the defendant’s burden to prove that there was an  
25 available administrative remedy, and that the prisoner failed to exhaust that remedy. *Albino*, 747  
26 F.3d at 1172. “Once the defendant has carried that burden, the prisoner has the burden of  
27 production. That is, the burden shifts to the prisoner to come forward with evidence showing that  
28 there is something in his case that made the existing and generally available administrative



remedies effectively unavailable to him.” *Id.* If the court concludes that the prisoner failed to exhaust available administrative remedies, the proper remedy is dismissal without prejudice. *See Jones*, 549 U.S. at 223–24; *Lira v. Herrera*, 427 F.3d 1164, 1175–76 (9th Cir. 2005).

### C. CDCR Grievance Procedures

The California Department of Corrections and Rehabilitation’s (“CDCR”) administrative remedy process governs this action.<sup>2</sup> *See* Cal. Code Regs. tit. 15, § 3084.1 (2016). To exhaust available remedies, an inmate must proceed through three formal levels of review unless otherwise excused under the regulations. *Id.* § 3084.5. A prisoner initiates the exhaustion process by submitting a CDCR Form 602 “Inmate/Parolee Appeal” (“grievance”). *Id.* §§ 3084.2(a), 3084.8(b) (quotation marks omitted). The grievance must “describe the specific issue under appeal and the relief requested,” and the inmate “shall list all staff member(s) involved and shall describe their involvement in the issue.” *Id.* § 3084.2(a). The inmate “shall state all facts known and available to him/her regarding the issue being appealed at the time of submitting the Inmate/Parolee Appeal Form, and if needed, the Inmate Parolee/Appeal Form Attachment.” *Id.* § 3084.2(a)(4). “Administrative remedies shall not be considered exhausted relative to any new issue, information, or person later named by the appellant that was not included in the originally submitted CDCR Form 602.” *Id.* § 3084.1(b).

An inmate must submit an appeal within thirty calendar days of “[t]he occurrence of the event or decision being appealed” or “[u]pon first having knowledge of the action or decision being appealed.” *Id.* § 3084.6(c)(4). Under certain circumstances, an appeal will be accepted after the deadline. A late appeal may only be canceled where “the inmate or parolee had the opportunity to submit within the prescribed time constraints.” *Id.* Further, “at the discretion of the appeals coordinator or third level Appeals Chief, a cancelled appeal may later be accepted if a determination is made that cancellation was made in error or new information is received which makes the appeal eligible for further review.” *Id.* at § 3084.6(a)(3). Under exceptional

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<sup>2</sup> Effective June 1, 2020, California Code of Regulations Title 15, sections 3084 through 3084.9 were repealed and replaced with renumbered and amended provisions at sections 3480 through 3487. *See Springs v. Raber*, 2022 WL 1004561, at \*3 (S.D. Cal. Apr. 4, 2022). All the citations in this order are to the regulations in place in 2019, the relevant period for this action.



circumstances an appeal may be accepted for review beyond the 30-day deadline, for instance, when an inmate is medically incapacitated and unable to file an appeal. *Id.* at § 3084.6(a)(4). Further, “[a]dministrative remedies shall not be considered exhausted relative to any new issue, information, or person later named by the appellant that was not included in the originally submitted CDCR Form 602 (Rev. 08/09), Inmate/Parolee Appeal, which is incorporated by reference, and addressed through all required levels of administrative review up to and including the third level.” Cal. Code Regs. tit 15, § 3084.1(b) (2019).

## ANALYSIS

### A. Material Facts Regarding Exhaustion of Administrative Remedies

Following a thorough review of the evidence submitted, the Court finds these material facts are deemed undisputed, unless otherwise indicated. Because Plaintiff did not submit a response to Defendants’ Separate Statement of Undisputed Facts (“SSUF”) as required by Local Rule 260(b), the Court may deem the facts asserted by Defendants in their SSUF undisputed unless otherwise contradicted by the pleadings. *See* Fed. R. Civ. P. 56(c).

- Since August 1, 2008, the California Department of Corrections and Rehabilitation (CDCR) Office of Appeals (OOA) has received, reviewed, and maintained all final-level appeals for non-health care issues. (Doc. No. 38-3 at 2 ¶ 2).
- When an inmate appeal is received by the OOA, it is assigned a tracking log number and entered into a computer system. (*Id.* ¶ 3).
- An “Appeal History Report” is available in the computer system for each offender. The Appeal History Report includes the following information: the offender’s first and last name, the offender’s CDCR number, the appeal log number, the appeal issue, the date the appeal was received, the underlying grievance log number (which includes the acronym of the institution or parole region where the underlying grievance arose), the date the appeal is closed, and the final disposition of the appeal. (*Id.*).
- All offender appeals are reviewed and screened in or screened out by the OOA. An appeal is screened out (and not answered substantively) if it does not comply with the

regulations governing the appeal process. If an appeal is screened out, the offender is informed of the reason for the screen out and how the deficiency can be cured, if the regulations provide for a cure. An appeal is screened in (and answered substantively) if it complies with the governing regulations. The Appeal History Report includes appeals that were screened out or in; and, if screened out, the report includes the reason for the screen-out. (*Id.* ¶ 4).

- Decisions by the OOA represent the final level of review in the Department’s grievance and appeal process and are rendered on behalf of the Secretary of the Department. (*Id.* ¶ 5).
- If filing a grievance before June 1, 2020, an offender was required to follow the procedures set forth in California Code of Regulations, title 15, sections 3084-85. (*Id.* ¶ 6).
- Before June 2020, the administrative grievance process consisted of three levels of review, which the inmate initiated by submitting an “appeal”—the CDCR Form 602 – Inmate/Parolee Appeal—which is now referred to as a “grievance.” (Doc. No. 38-4 at 1-2 ¶ 2).
- First- and second-level appeals were handled by staff located at the institution where the incident giving rise to the inmate complaint occurred, while third-level non-medical appeals were received and decided at the Office of Appeals located in Sacramento, California. (*Id.*).
- For appeals submitted before June 2020, a substantive decision at the third level exhausted CDCR’s administrative remedies. (*Id.*).
- The OOA’s records of appeals are maintained in the course of regularly conducted activities of the OOA, and making and maintaining records is a regular practice of those activities. (Doc. No. 38-3 at 3 ¶ 7).
- A search was conducted at the institutional level Office of Grievances (“OOG”) for any appeal submitted by Plaintiff containing allegations that Defendant Hosey violated Plaintiff’s Eighth Amendment rights by failing to protect Plaintiff from an inmate assault

on April 7, 2019, including, but not limited to, opening Plaintiff's cell to inmate Price, allowing inmate Price to assault Plaintiff. (Doc. No. 38-4 at 3-4 ¶ 9(a)–(c)).

- A search was conducted at the institutional level OOG for any appeal submitted by Plaintiff containing allegations that Defendant Mendoza violated Plaintiff's Eighth Amendment rights by failing to protect Plaintiff from an inmate assault on April 7, 2019, including, but not limited to, authorizing Defendant Hosey to open Plaintiff's cell to inmate Price. (*Id.*).
- A search was conducted at the institutional level OOG for any appeal submitted by Plaintiff containing allegations that Defendant Espinoza violated Plaintiff's Eighth Amendment rights by failing to protect Plaintiff from an inmate assault on April 7, 2019, including, but not limited to, having an intimate relationship with inmate Price and rehiring inmate Price as a porter, which allowed him to assault Plaintiff. (*Id.*).
- In CDCR 602 Log No. WSP-B-19-01089, dated April 7, 2019, Plaintiff alleged that an angry porter turned to the tower and demanded Plaintiff's cell be opened. Shortly after, the cell was opened and Plaintiff quickly closed it. The porter demanded the door be opened again, and it was. The porter rushed in and assaulted Plaintiff. Plaintiff explained that, since this inmate worked as a porter, it was known that Plaintiff's cell did not belong to the porter. This is because Plaintiff's cell has no "TV view" like all the other porters' cells. The CDCR 602 did not assert any allegations related to Defendant Mendoza or Espinoza. Nowhere in the grievance does Plaintiff allege that the tower officer walked over to Defendant Mendoza's office and nodded before opening his cell. Further, Plaintiff did not allege that the porter had been reinstated by Defendant Espinoza after fighting with another inmate. (Doc. No. 38-3 at 12, 14).
- The institution's response to the grievance only identified Plaintiff's issue with Defendant Hosey opening Plaintiff's cell door. During Plaintiff's interview pursuant to the second-level response, Plaintiff was asked if Defendant Hosey was regularly assigned to his building, and he said "No." Plaintiff admitted, "That officer is not the regular. He didn't know us but he should have known that Price didn't live in my cell. I don't think he did it

on purpose, but he made a mistake. The officer is young and he should learn from this mistake. I think its bullshit that I got my ass beat for his mistake.” The interview summary did not mention any allegations related to Defendants Mendoza and Espinoza. The grievance was partially granted in that an inquiry into the allegations was conducted. The response informed Plaintiff that staff personnel matters are confidential and that he was required to appeal the determination to exhaust his administrative remedies. (Doc. No. 38-4 at 4 ¶ 10(a), 12-18).

- Other than the grievance listed above, OOG located no other grievances submitted by Plaintiff regarding or related to allegations described above. (*Id.* at 4 ¶ 11).
- Plaintiff appealed his grievance above to the OOA. The appeal is identified as Appeal Log No. 1907696. In Plaintiff’s appeal, Plaintiff raised new issues concerning the April 7, 2019 incident, implying potential wrongdoing by Defendants Mendoza and Espinoza. For example, Plaintiff asked why Defendant Hosey walked to Defendant Mendoza’s window before opening Plaintiff’s door, who reappointed inmate Price as a Porter, and why inmate Price bragged that he was often naked when Defendant Espinoza conducted inmate counts. The OOA denied Plaintiff’s appeal because it determined that Plaintiff’s initial allegations were appropriately reviewed and evaluated by administrative staff. The response notified Plaintiff that he added new issues and requests to the appeal and informed him that it was not an appropriate way to expand the appeal. OOA also directed Plaintiff to the appropriate regulations. (Doc. No. 38-3 at 3-4 ¶ 9, 11-19).
- No other appeals were received by the OOA during the relevant timeframe which contained any of the allegations described above. (*Id.* at 4 ¶ 10).

#### **B. Plaintiff’s Exhaustion of his Eighth Amendment Failure to Protect Claim**

The basic facts concerning Plaintiff’s exhaustion of administrative remedies are not in dispute. Plaintiff filed a grievance regarding the April 7, 2019 incident stating in pertinent part:

An angry porter was outside my locked cell yelling at me that he was going to kick my ass—very loud and repeated. The officers should not open an inmate’s cell unless he is sure that the inmate belongs in that cell—especially SNY.

1 The porter turned to the tower and loudly demanded the cell to be  
 2 opened. Shortly, the cell was opened and I quickly closed it. The  
 3 porter again yelled for the door to be [illegible], it was, and the  
 4 porter rushed in and assaulted me. He tried to close the door but  
 my hand was in the way – I made it out of my cell and down the  
 steps.

5 Based on other events and the fact that this porter worked morning  
 6 and night—it was known that this was not his cell. The cell has no  
 7 TV view and all the porters are located right in front of the TV.  
 This porter has bragged that officers tell him all the inmate charges  
 so he can threaten them.

8 (Doc. No. 38-3 at 12, 14). It is undisputed that Plaintiff does not mention Defendants Mendoza or  
 9 Espinoza or their alleged actions in the initial grievance. Nor did Plaintiff's grievance interview  
 10 include any mention of either Defendant. Instead, Plaintiff first included allegations concerning  
 11 Defendants Mendoza and Espinoza in his third-level appeal. Thus, Plaintiff has not complied  
 12 with Section 3084.2(a) of Title 15, which requires an inmate to "list all staff member(s) involved  
 13 and describe their involvement in the issue."

14 The two questions before the Court are: (1) whether Plaintiff establishes a genuine dispute  
 15 of material fact as to whether administrative remedies were unavailable to him, therefore  
 16 excusing his failure to adequately exhaust his administrative remedies; and if not, (2) whether  
 17 Plaintiff's reference to Defendants Espinoza and Mendoza in his third-level appeal was sufficient  
 18 to exhaust his administrative remedies as to them. For reasons set forth below, the Court  
 19 concludes that it was not.

#### 20 1. Whether Administrative Remedies Were Available to Plaintiff

21 It is not disputed that Plaintiff availed himself of the administrative grievance process  
 22 during his time at Wasco State Prison. From February to September 2019, he filed and exhausted  
 23 to the third level another grievance related to his alleged loss of property (Log No. WSP-19-  
 24 00545). (Doc. No. 38-4 at 4 ¶ 12, 20-47). Plaintiff also pursued the instant grievance through all  
 25 three levels, including a grievance interview with Lieutenant Aceves on April 22, 2019. (Doc.  
 26 No. 38-3 at 12-19).

27 Liberally construed, Plaintiff's argument is that WSP's administrative grievance process  
 28 was unavailable to him for two reasons.

1 First, because he was not provided access to the inmate manual at WSP or properly  
2 advised as to grievance procedures, thus he was not aware of all relevant rules and requirements  
3 for filing grievances. (Doc. No. 41 at 3-4). Plaintiff cites to *Fordley v. Lizarraga* for the  
4 proposition that “administrative remedies were unavailable where a manual describing the  
5 complaint process was kept from inmates.” *Fordley v. Lizarraga*, 18 F.4th 344, 352 (9th Cir.  
6 2021), citing *Albino v. Baca*, 747 F.3d 1162, 1173-75 (9th Cir. 2014). However, the facts in  
7 *Albino* are readily distinguishable from those in the instant case. In that case, a Spanish-speaking  
8 county jail inmate asserted that he was

9 never given any orientation at the jail, during which he could have  
10 been informed of a complaint process. He also declares that he has  
11 never seen the jail’s personnel manual, a complaint box, or a  
12 complaint form. Finally, he declares that he repeatedly sought, and  
13 was denied, help from the prison staff . . . Staff members never told  
14 him that complaint forms were “available for any inmate who  
15 requests them” . . . and they never construed Albino’s complaints as  
requests for such forms. Nor did staff members tell Albino that he  
could put in a complaint box, or give directly to them, a written  
complaint, even if not on an official form. Instead, staff members  
repeatedly told Albino that he should seek relief by talking to his  
criminal defense attorney.

16 747 F.3d at 1175-76.

17 Plaintiff does not cite to any portion of the record for his claim that he was not provided  
18 relevant grievance procedures and a copy of the inmate manual. Moreover, the record is  
19 undisputed that Plaintiff is a self-described well-educated individual who did not face any  
20 language barrier in navigating WSP’s administrative grievance process and previously availed  
21 himself of that process by completing it through the third level of review. (See Doc. No. 38-4 at  
22 12 ¶ 4; Doc. No. 41 at 9). Plaintiff implies that the actions of WSP officials rendered the  
23 administrative grievance unavailable under *Ross*, in which the Supreme Court stated that an  
24 inmate is excused from exhausting administrative remedies where the process is “so opaque that  
25 it becomes, practically speaking, incapable of use. In this situation, some mechanism exists to  
26 provide relief, but no ordinary prisoner can discern or navigate it.” *Ross*, 578 U.S. at 643–44.

27 Plaintiff does not, however, specify any provision of the administrative grievance process  
28 that was “opaque” to him that he was not able to properly exhaust his administrative remedies.

1 Moreover, the Office of Appeals advised Plaintiff in its Third-Level Appeal Response that he had  
2 improperly included new issues in his appeal and was directed to the specific provisions of Title  
3 15 that he violated. (Doc. No. 38-3 at 18). Accordingly, the Court does not find Plaintiff has met  
4 his burden of production to show that administrative remedies were unavailable to him based on  
5 WSP officials' alleged failure to provide him a copy of the inmate manual or inmate grievance  
6 procedures.

7 Second, Plaintiff contends administrative remedies were unavailable because in the  
8 minutes after the April 7, 2019 incident, a sergeant wrongly told Plaintiff that he had to complete  
9 the 602 form immediately or else forfeit the right to file a grievance; Plaintiff was thus forced to  
10 complete the grievance "sitting on [a medical exam table], without [his] glasses, [his] head  
11 pounding and the nurse stitching [his] eye and examining [his] head for other injuries." (*Id.* at 3).  
12 As a result, Plaintiff was unable to include all relevant details that he would have if he had not  
13 been pressured to complete the form immediately. (*Id.*).

14 Plaintiff implies that the unnamed sergeant thwarted his efforts to fully describe the  
15 incident and comply with prison regulations when he forced Plaintiff to complete the grievance  
16 form under duress. (Doc. No. 41 at 7-8). Notably, the regulations provide Plaintiff with thirty  
17 (30) days to file a grievance. Moreover, Plaintiff also failed to describe the involvement of  
18 Defendants Mendoza or Espinoza in his interview with Lieutenant Aceves on April 22, 2019,  
19 more than two weeks after the incident. (*See* Doc. No. 38-3 at 16-17). It was not until June 25,  
20 2019 that Plaintiff raised the additional questions and allegations regarding Defendants Mendoza  
21 and Espinoza (*see id.* at 15), belying his claim that but for the Sergeant's intimidation, he would  
22 have included those details in the initial grievance and successfully exhausted his claims as to  
23 them.

24 For reasons set forth above, the Court finds that Plaintiff fails to carry his burden of  
25 production to show that the administrative grievance process was unavailable to him. Thus, the  
26 Court turns to whether Plaintiff adequately exhausted his administrative remedies as to  
27 Defendants Espinoza and Hosey.

28 ///



1           2. Whether Plaintiff Exhausted his Administrative Remedies as to Defendants Mendoza  
2           and Espinoza

3           Under California regulations, “[a]dministrative remedies shall not be considered  
4 exhausted relative to any new issue, information, or person later named by the appellant that was  
5 not included in the originally submitted CDCR Form 602.” 15 Cal. Code Regs. § 3084.1(b). “But  
6 the regulations also contemplate that the involved staff member may be identified later in the  
7 appeal process if the inmate does not know the staff member’s identity at the time of submitting  
8 the original appeal.” *Silva v. Blagg*, 2019 WL 1744216, at \*8 (C.D. Cal. Jan. 18, 2019) (denying  
9 motion for summary judgment as to two defendants who were not named in initial grievance  
10 because their identities were not known at the time but whose actions were described in the  
11 grievance), *report and recommendation adopted*, 2019 WL 3064467 (C.D. Cal. Mar. 13, 2019),  
12 citing 15 Cal. Code Regs. § 3084.2(a)(3); *see also Hernandez v. Hernandez*, 2015 WL 2374262,  
13 at \*4-\*5 (E.D. Cal. May 17, 2015) (rejecting argument that inmate’s identification of officers who  
14 beat him later in the appeal process constituted improper addition of new issue because inmate  
15 provided all information available at time of original appeal), *report and recommendation*  
16 *adopted*, 2015 WL 3545630 (E.D. Cal. June 4, 2015).

17           Thus, in certain circumstances, courts have found that a plaintiff may exhaust his  
18 administrative remedies by later identifying individuals whose actions were described in the  
19 initial grievance but failed to name them. Here, Plaintiff neither named Defendants Mendoza and  
20 Espinoza nor included any actions attributable to them. And case law and applicable regulations  
21 are clear that “a prisoner does not exhaust administrative remedies when he includes new issues  
22 from one level of review to another.” *Dawkins v. Butler*, 2013 WL 2475870, at \*8 (S.D. Cal.  
23 June 7, 2013) (granting motion to dismiss on exhaustion grounds where second level appeal  
24 raised issues not described in initial grievance); *see also Shepherd v. Cornwell*, 2021 WL  
25 3808889, at \*5 (E.D. Cal. Aug. 26, 2021) (same), *report and recommendation adopted*, 2021 WL  
26 4942836 (E.D. Cal. Oct. 22, 2021); *see* 15 Cal. Code Regs. § 3084.1(b).

27           Plaintiff contends that under the Ninth Circuit’s holding in *Reyes v. Smith*, his failure to  
28 name all involved staff members was not necessarily fatal. *Reyes* is distinguishable from the

1 instant case. In that case, plaintiff filed a health care grievance regarding his institution's gradual  
2 termination of his access to morphine for pain management. 810 F.3d 654. The institution  
3 denied Plaintiff's grievance and appeals and noted in its responses that the prison's Pain  
4 Management Committee ("PMC") had "recommended against narcotics." *Id.* at 656. After  
5 Plaintiff filed suit against two members of the prison's PMC and other prison officials, the district  
6 court granted an exhaustion-based motion for summary judgment as to the two PMC members  
7 because they had never been named in Plaintiff's health care grievances, contrary to Cal. Code  
8 Regs. tit. 15 § 3084.2(a) (2015). *Id.* at 656-57.

9 The Ninth Circuit reversed, noting the explicit reference to the PMC in the institution's  
10 responses in finding that Plaintiff's grievance "plainly put prison officials on notice of the nature  
11 of the wrong alleged in his federal suit—denial of pain medication by the defendant doctors  
12 [because] [p]rison officials . . . plainly knew that the Pain Management Committee, of which Drs.  
13 Smith and Heatley and Smith were members, had decided Reyes should not receive the  
14 medication . . ." *Reyes*, 810 F.3d at 659. Thus, even though *Reyes* had not named the specific  
15 defendants in his grievance and appeals, the Court found that the prison and those defendants  
16 were on notice of the nature of Reyes' claims. The Ninth Circuit also held that where the prison  
17 did not enforce a procedural rule, such as the requirement of naming all involved individuals, but  
18 instead addressed a grievance on the merits, it could not later enforce that rule so long as it was  
19 on notice of the claim. *Id.* at 658.

20 The instant action is distinguishable from *Reyes* for two reasons. First, unlike in *Reyes*,  
21 the involvement of Defendants Mendoza and Espinoza is not "easily identified" in Plaintiff's  
22 grievance. *Id.* at 658. Instead, the original grievance only describes Inmate Price "turn[ing] to  
23 the tower") (i.e. Officer Hosey) to ask that Plaintiff's cell door be opened and does not include  
24 any facts to suggest that anyone other than the tower officer was responsible for opening  
25 Plaintiff's cell door and facilitating the attack by Inmate Price. (*See* Doc. No. 38-3 at 12, 14).

26 Plaintiff's appeal did not merely identify individuals whose actions were previously  
27 described in his grievance, as in *Silva* and *Hernandez*. Rather, it raised new allegations  
28 concerning Defendant Mendoza and Espinoza that were in no way referenced or identified in his

1 initial grievance or in Plaintiff's grievance interview with Lieutenant Aceves on April 22, 2019.  
2 There is nothing in the grievance to suggest or imply that any other correctional staff was  
3 involved in the incident; there is no reference to Defendant Espinoza's alleged favoritism toward  
4 Inmate Price that allowed him to be reinstated as a porter or to a supervisor approving the tower  
5 officer's actions. Plaintiff does not dispute that he also made no reference to either Espinoza or  
6 Mendoza in his grievance interview on April 22, 2019. (Doc. No. 38-4 at 17-18; *see* Doc. No.  
7 41). Indeed, the institutional responses to Plaintiff's grievance do not indicate that WSP officials  
8 were on notice of the involvement of any other staff beyond Defendant Hosey. (Doc. No. 38-3 at  
9 16-19). Because only Defendant Hosey's actions were identified in the original grievance, the  
10 record shows that Defendants Mendoza and Espinoza could not have been "easily identified" in  
11 Plaintiff's initial grievance.

12 Second, unlike in *Reyes*, prison officials did not "opt not to enforce a procedural rule" as  
13 to Defendants Mendoza and Espinoza. *Reyes*, 810 F.3d at 658. In *Reyes*, prison officials'  
14 responses indicated they recognized Plaintiff's allegations against unnamed members of the Pain  
15 Management Committee but did not enforce the Title 15 requirement that he name them in his  
16 grievance. *Id.* Here, there is no indication in the responses from the WSP Office of Grievances  
17 or the CDCR Office of Appeals that prison officials were aware of allegations against any other,  
18 unnamed WSP employee. (*See generally* Doc. No. 38-3 at 16-19). Indeed, the Office of Appeals  
19 expressly enforced the procedural rule. Instead, the Office of Appeals' third-level appeal  
20 response advised Plaintiff that he "has added new issues and requests to the appeal" and declined  
21 to address those issues, citing pertinent sections of the California Code of Regulations and the  
22 Department Operations Manual. (Doc. No. 38-3 at 19). The OOA response specifically cited  
23 Section 3084.1, which includes the relevant provision that "[a]dministrative remedies shall not be  
24 considered exhausted relative to any new issue, information, or person later named by the  
25 appellant that was not included in the originally submitted CDCR Form 602." 15 Cal. Code  
26 Regs. § 3084.1(b). Thus, Plaintiff was on notice that he had not exhausted the additional claims  
27 cited in his appeal and needed to take further action to do so, which he did not. Significant,  
28 CDCR regulations provided Plaintiff 30 days to file a new grievance regarding Defendants

Mendoza and Espinoza after he was advised of the procedural error. Cal. Code Regs. tit. 15, § 3084.8(b) (2019). Plaintiff chose not to submit a new grievance related to these new allegations.

### CONCLUSION

The Court finds the undisputed record demonstrates that an administrative grievance process was available to Plaintiff during the time frame of April-September 201. The evidence is undisputed that Plaintiff's grievance did not put prison officials on notice as to Defendant Mendoza or Espinoza's involvement in the alleged wrongdoing. Consequently, Plaintiff failed to exhaust his administrative remedies as to those individuals. Thus, Defendants Mendoza and Espinoza are entitled to summary judgment and this case will proceed against Defendant Hosey.

Accordingly, it is **ORDERED**:

1. Defendants' Exhaustion-Based Motion for Summary Judgment as to Defendants Mendoza and Espinoza (Doc. No. 38) is **GRANTED**.
2. Plaintiff's Eighth Amendment failure to protect claims against Defendants Mendoza and Espinoza are dismissed due to Plaintiff's failure to exhaust his administrative remedies as to Defendants Mendoza and Espinoza.
3. The Clerk of Court shall correct the caption to reflect that this case remains pending only against Defendant Hosey.
4. The remaining deadlines in the Amended Case Management and Scheduling Order (Doc. No. 34) shall govern this action.

Dated: January 29, 2025

  
HELENA M. BARCH-KUCHTA  
UNITED STATES MAGISTRATE JUDGE